

Austin Flake and Logan Flake,)
) No. **CV 15-1132-PHX-NVW**
 Plaintiffs,)
)
 vs.) Phoenix, Arizona
) December 14, 2017
Joseph Michael Arpaio,) 2:00 p.m.
et al.,)
)
 Defendants.)

BEFORE: THE HONORABLE NEIL V. WAKE, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS-PARTIAL

(Closing Arguments)

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By Mr. Leonard

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By Mr. Montoya

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1 E X C E R P T E D P R O C E E D I N G S

2 THE COURT: All right. The plaintiffs may make their
3 opening statement -- I mean closing argument.

4 MR. MONTROYA: Thank you.

5 The greatest thing about our country, the greatest
6 thing, in my opinion, about being an American, the thing that
7 makes us lucky is that in America, to a certain extent, we can
8 sue our government when our government violates our rights.

02:00PM

9 I know all you folks watch the news. And we hear
10 about other countries all over the place, and most of those
11 countries do not have that right. And that right is the
12 foundation for every other right. We have free speech. But if
13 the government can take away our free speech with impunity,
14 what good is that right. I tell you, there are a lot of big
15 businesses in America. None of them are as big as government.
16 Government is the biggest power that we face in America. And
17 our ability to hold our government to account is all we have to
18 maintain our freedom.

02:00PM

02:01PM

19 And praise God that we're here today considering this
20 issue that we have this Court, that symbol, that allows us to
21 challenge government action. And notice how we're not
22 challenging it before a government official, and that I'm
23 looking at you, and this time the judge is saying I can,
24 because you are in charge. That's the beauty of our
25 government. And it's your duty to protect that. Remember

02:01PM

02:02PM

1 that.

2 You know, this case is really compelling. It's really
3 interesting because it's easier to explain this case by
4 thinking about what it's not about instead of what it is about.
5 Let's talk about what this case is not about. Based on the 02:02PM
6 evidence, and I will be specific, this case is not about, even
7 though you heard Sheriff Arpaio, that's how we began, failure
8 to provide food, water, shelter. It's not about Logan and
9 Austin's failure to provide those dogs food or water. You
10 heard Detective Trombi. I asked her flat out, are you saying 02:02PM
11 they failed to provide the dogs food? No. I'm not saying
12 that. Asked Steinberg, are you accusing them of failing to
13 provide the dogs water? No, we're not saying that. Our 21
14 felony charges are not saying that. It's not about failure to
15 provide food. It's not about failure to provide water. 02:03PM

16 Another thing that the two law enforcement officials,
17 both county employees, Steinberg was a county attorney when
18 this went down. Remember, Trombi is still a county employee.
19 Arpaio was a county employee at the time as well. Steinberg
20 also testified, like Trombi did before her, Arpaio didn't 02:03PM
21 really have a clue other than talking to the press. Remember
22 when I asked Trombi, are you blaming Logan and Austin for the
23 air conditioning system at her parents' house? She said, oh,
24 no. I'm not blaming them for that. I asked Steinberg the same
25 thing: Are you blaming these young people? They are kids to 02:04PM

1 me, because I am 57. Are you blaming these young people for
2 their parents' air conditioning, their in-laws' air
3 conditioning? No. For the alleged lack of ventilation? No.
4 So it's not about food. It's not about water. It's not about
5 the A/C system. It's not about the lack of ventilation. They
6 have admitted that. You remember that. Both of the law
7 enforcement officers who actually have knowledge of the case
8 admitted all those things.

02:04PM

9 Another thing that this case is not about, and I tell
10 you, the defense really wanted to make it about that. The
11 defense really hammered, every chance they could by innuendo
12 and other types of smears, Logan's parents. And I might have
13 irritated you when I objected all the time. And sometimes we
14 went before the judge and we were whispering over there and you
15 could see us arguing. And I was watching you watch us argue.
16 And when I was watching you watch us argue I was getting
17 concerned that you folks were going to believe that I was
18 trying to conceal something from you.

02:05PM

02:05PM

19 And it's true. I was. I was trying to keep out from
20 evidence what Logan's parents did or didn't do. And I will
21 tell you why. Because as the judge repeatedly stated over and
22 over again, this case is not about what Logan's parents did or
23 didn't do. Because another thing that we have to be really
24 grateful about in this country is that guilt is individual.
25 You cannot be charged for something that somebody else did,

02:05PM

02:06PM

1 guilt by association, family guilt, those are all principles
2 that are alien to our criminal justice system and it's your job
3 to keep it that way.

4 So the case isn't about failure to feed, failure to
5 water, failure to maintain an A/C, failure to maintain a proper 02:06PM
6 ventilation system, or what Austin and Logan's parents did or
7 didn't do. But I tell you, that's a pretty broad universe.
8 That's what this case is really about. It's about nothing.
9 That's why the judge has already ruled that there was no
10 probable cause that these folks be indicted for 21 felony 02:06PM
11 counts. That's another big nothing. The judge has concluded
12 that as a matter of law, that, in fact, there was no reasonable
13 basis for Trombi or Steinberg to even conclude that there was a
14 felony based on the facts of this case.

15 Because remember what Trombi and Steinberg also 02:07PM
16 testified to? Trombi, I asked her, and I had gone over this as
17 I reminded her in her deposition: Are you saying that Austin
18 and Logan intentionally hurt those 21 dogs including their own
19 dog Patrick, or Logan's own dog Patrick? Oh, no. I'm not
20 accusing them of that. Okay. Well, are you accusing them of 02:07PM
21 knowingly putting them in harm's way? For example, suppose you
22 are cruising down the highway, rush hour traffic over there on
23 17 or the 10, 5:00 or 4:30 it gets really bad, 5:30, whatever,
24 and you decide to let your dog out on to the highway. Well,
25 God, that's knowingly exposing an animal to a known danger 02:08PM

1 because you would have to be crazy to do that in that type of
2 traffic.

3 However, if you let your dog walk down a country road
4 and all of a sudden a jet comes speeding by at the speed of
5 light and runs over your pet, that's not knowingly putting your
6 pet in harm's way. There was no basis to conclude that the
7 statute was violated.

02:08PM

8 One of the most appalling things that you heard in
9 this trial is Detective Trombi's remorseless, unrepentant
10 testimony. Do you remember -- God, I hope you do -- when I
11 asked Detective Trombi, gee, can you indict someone for a
12 felony under the animal cruelty statute based on negligence?
13 No. I don't know. She said she didn't know. I asked whether
14 or not she could predicate a felony indictment under the animal
15 cruelty statute based on recklessness. She didn't know that,
16 either. She's been in the animal cruelty unit for nine years.
17 She's recommending that a 20-year-old and a 21-year-old be
18 indicted for 21 felonies and she doesn't know that. Do you
19 really believe that?

02:09PM

02:09PM

20 I tell you, Trombi's many things but she's not stupid.
21 She's not. I think it's more likely that she's dishonest than
22 she's that stupid not to have read the statute not to know what
23 the statute that she uses to destroy people's lives means.
24 Come on. That's reckless. That's crazy. It's her job to know
25 that.

02:10PM

02:10PM

1 Remember Trombi also testified to you that she can't
2 be wrong. She testified to that at her deposition, as I
3 reminded her. She can't be wrong because her job is too
4 important. Like for example suppose you are a sniper and you
5 are trying to take out a bank robber who is amongst a bunch of
6 innocent people. The sniper can't be wrong because otherwise
7 the sniper is going to shoot down an innocent person. That's
8 also true for a detective. The detective cannot be wrong.

02:10PM

9 Remember when Sheriff Joe testified, oh, I'm sure that
10 my detectives consulted with attorneys during the
11 investigation. He said that several times. And I asked him
12 quizzically, maybe dramatically hoping you would remember right
13 now, asked him quizzically, are you sure? He says oh, yeah,
14 I'm sure. Then when I asked Trombi that, no, I never consulted
15 with an attorney before my recommendation of 21 felony counts.
16 First time I spoke to an attorney was after I made the
17 recommendation when I hand-walked it to the county attorney's
18 office. She hand-walked her 21 felony count recommendation to
19 the county attorney's office.

02:11PM

02:11PM

20 So even though there was no urgency to filing these
21 charges, there's never been any testimony that we must file
22 them quickly because of some legal requirement or some factual
23 requirement. She didn't even seek any legal advice but yet she
24 can't tell you whether or not negligence is enough.

02:12PM

25 And I will talk about this later. But the judge has

02:12PM

1 already -- part of the judge's instructions regarding probable
2 cause is that negligence, recklessness, imprudence is not
3 enough for a felony. Trombi didn't even know that. When the
4 judge asked her, why wasn't this an accident, I remember what
5 Trombi testified: I don't know. Steinberg and Trombi both 02:12PM
6 testified that even though they weren't responsible for failure
7 to feed, failure to water, failure to maintain A/C ventilation,
8 here's what they were responsible for: They knowingly put the
9 dogs in the dog room. And because it was so small it was
10 inherently dangerous as a matter of common sense. There's no 02:13PM
11 reason behind that. Honestly, that is crazy. And that is also
12 wrong for a detective or a county attorney to say in support of
13 a 21-count felony indictment. Because guess what? Steinberg
14 was a little bit hazy on this. When I asked her, where do
15 these laws come from? I had to ask her several questions 02:13PM
16 before she finally admitted that it's the legislature that
17 writes the law.

18 Now, Your Honor, may I pull the --

19 THE COURT: You may.

20 MR. MONTROYA: I'd like help. Where should I stop? 02:14PM

21 THE COURT: Put it where everybody can see it.

22 MR. MONTROYA: Now, we've gone through this many times.
23 I will try to be brief. Necessary shelter. The judge says,
24 hey, in order to be guilty of a felony, you must knowingly put
25 a dog in harm's way in reference to their shelter. Here's the 02:15PM

1 most obvious case about that that you might have heard on the
2 news. When it's swelteringly hot in Phoenix like 117,
3 sometimes it gets, and you have a horse outside who doesn't
4 have any shade, that can really hammer an animal. That's
5 failure to provide an animal shelter. When it's -- suppose you 02:15PM
6 live up in the mountains of Flagstaff and you are in a blizzard
7 and you leave your dog outside without any shelter to freeze,
8 that's -- anyone would know not to do that. Anyone would know
9 that's putting your dog in harm's way, leaving your horse in
10 harm's way. That much makes sense. 02:16PM

11 But hey, listen, the testimony is unequivocal and
12 undisputed that Logan's parents put those dogs, put dogs in
13 that dog room, for about two years before Logan an Austin took
14 over on June 14th. There's no evidence that any of those dogs
15 were harmed during that time. And remember what the case is 02:16PM
16 not about. It's not about the A/C or ventilation. So if
17 something works for two years, how could someone knowingly be
18 putting the dogs in harm's way by putting them in the dog room?
19 There's nothing to that. That belief is just crazy. Is that
20 negligent or reckless? Who knows. Who cares. It's 02:16PM
21 irrelevant. Like the judge's instructions direct you, you need
22 knowing or intent. You have to intend to hurt the dogs or put
23 them in harm's way knowingly to be guilty of a felony.
24 Everyone admits that didn't happen in this case.

25 Do you remember when I asked Trombi, once again, do 02:17PM

1 you think they meant to hurt -- they knew that the dogs would
2 be hurt by putting them in there? No, I don't think that. How
3 could she deny that? They put them in there and they were fine
4 on the 14th, 15th, 16th, 17th, 18th, 19th, and then the
5 tragedy, the accidental tragedy, that transpired sometime the 02:17PM
6 morning of the 20th. There is no evidence that my clients even
7 came close to violating that statute.

8 But so that's what's missing. But let's talk about
9 what is present. You know, Sheriff Arpaio, when I asked him
10 whether he was seeking publicity, that is the only way to 02:18PM
11 explain his behavior in this case from the very beginning, from
12 the very beginning. Dogs die on Friday the 20th. Boy, I will
13 tell you, Monday he's already before the press. There has been
14 no investigation of that's been completed, and the only
15 investigation that there was took place the 21st. Then we have 02:18PM
16 the press announcement that the Maricopa County Sheriff's
17 Office say it's a tragic accident. That was what they said.
18 There was no evidence to the contrary.

19 But yet Sheriff Joe is in front of the cameras on the
20 23rd. And what's he doing? Even though he said, remember he 02:19PM
21 swore, and this is why you should not believe him. Do not
22 believe Sheriff Arpaio because he repeatedly and demonstrably
23 lied to you right from the get-go. Did you have a press
24 conference the 23rd, I asked him? Oh, no. No. Didn't do it.
25 Are you sure? Yes, I'm sure. Then I had these pictures that I 02:19PM

1 showed him.

2 Permission. Admitted into evidence.

3 THE COURT: You don't need permission.

4 MR. MONTROYA: Understood.

5 Remember those? Those were first up. And there he is
6 pictured, holding, of all things, pictures of the dead dogs,
7 paging through them. "Photos of the dogs found dead" reads the
8 caption on the 23rd.

02:19PM

9 Now, I tell you, what is the best way to inflame
10 people? What is the best way to get attention? Parade
11 pictures of dead animals. Think of what attention a law
12 enforcement officer would get if he held a press conference
13 holding pictures of a bunch of dead bodies, human bodies.

02:20PM

14 People would be aghast. It would be outrageous. But because
15 they were only dogs, somehow it wasn't as bad. I think it was
16 very bad. I will tell you one thing. It unequivocally
17 demonstrates that he was doing it for attention. Because
18 otherwise, if he's not doing it for attention, and as he
19 claimed falsely, oh, I just wanted to inform the public.

02:20PM

20 Here's how you inform the public: Hey, listen, 21 dogs died
21 out in Gilbert. We started our investigation on Saturday, the
22 21st, and we're going to continue it. Because our
23 investigation is, at this early juncture, incomplete I don't
24 have a lot to report to you folks. We're going to try to
25 complete our investigation promptly. And when we do, if

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02:21PM

1 appropriate, we'll let you know. That's what would have been
2 appropriate for a legitimate public communication from the
3 sheriff. That's not what he did. What did he do? He showed
4 the pictures of the dogs. That is inflammatory.

5 And he simultaneously -- first of all, his own news 02:21PM
6 release contradicts his sworn testimony to you. He held a
7 press conference. He denied it under oath. Even though, Lord
8 knows, I didn't write that. My name's not on it. That's what
9 Arpaio said, that he had a press conference, yet he denied it
10 to you at the beginning of his testimony. And I will tell you 02:22PM
11 the reason why he denied it, because his real purpose in taking
12 such a great interest in this case was to attract publicity to
13 himself like he denied. But remember, a federal judge actually
14 had a trial, a mini-trial, regarding whether or not Sheriff Joe
15 did things for purposes of publicity, and the judge found him 02:22PM
16 guilty. So I'm not the only one saying that. Judge Murray
17 Snow said that. And Sheriff Joe had the right to be heard in
18 that case just like he did in this case.

19 You know, another thing about Sheriff Joe, notice how
20 he doesn't take responsibility for his acts. Even though he 02:23PM
21 got in front of the press and said all kinds of things, he
22 didn't want to take any responsibility. Even though he claimed
23 rhetorically the buck stopped with him, he took no
24 responsibility. He never apologized to these kids. And yes,
25 do see him right now? He's being sued. Where is he? He will 02:23PM

1 not come and show his face before this jury because he doesn't
2 care. He doesn't have the courage to come back. Once he got
3 off the witness stand he left the courtroom, and you haven't
4 seen him since. That shows that he doesn't care, that he
5 doesn't accept responsibility. His testimony was certainly
6 remorseless in addition to being false.

02:23PM

7 Look, June 23rd, not even two days, not even three
8 days after the dogs died, he's already saying that the
9 caretakers' version of what they died of is highly suspect.
10 And what is he doing? The animals were being overseen by their
11 relatives, Logan and Austin Flake. Then the evidence showed
12 that right after the name was released, the Flake name was
13 released, the case mushroomed into the media. Of course it's
14 going to mushroom in the media when you have Sheriff Arpaio,
15 who is a national and international celebrity, parading
16 pictures of dead dogs to the press. Of course the media is
17 going to pick up on it. This shows that Sheriff Joe was doing
18 this for purposes of publicity.

02:24PM

02:24PM

19 Now, what else did Sheriff Joe do? You know, I will
20 go through them quickly. This isn't the only press conference
21 he had. And this is Exhibit 4. You will have it in the jury
22 room. But also, remember he sent out a government helicopter
23 to search for Valor, the dog that ran away? That's a
24 publicity. A government, a police helicopter searching for a
25 missing dog? When have you ever heard of that before? And he

02:25PM

02:25PM

1 bragged about it. Launched his helicopter to aid ground
2 search. So not only did he do it, he could say, oh, I just
3 love dogs a lot. What did you do to help physically? Nothing.
4 Sent a helicopter out and bragged about it in the news. And he
5 also brags that he's going to attend a Saturday vigil for the 02:26PM
6 deceased dogs. Law enforcement officers are supposed to be
7 neutral, but yet he's reaching out to these dog owners for
8 purposes of publicity like he was accused of by his executive
9 chief.

10 Then what does he do? Exhibit Number 5, this is the 02:26PM
11 press release he released on July 9th when Sheriff Joe went to
12 the Hugheses' home for the execution of the search warrant.
13 And remember Trombi testified that when she saw Sheriff Joe at
14 the Hugheses' home during the execution of the search warrant
15 she didn't see him do anything other than talking to the press. 02:26PM
16 He didn't do any law enforcement work. I asked him what were
17 you doing there besides talking to the press? He said
18 supporting my people. Come on. Supporting them how? How do
19 you support your people if all you do is talk to the press? I
20 know how to support people. I have people I work with. I will 02:27PM
21 tell you how I support them, elbow to elbow, working with them.
22 That's how your bosses probably support you, by working with
23 you side by side, helping you, watching you do your job. How
24 do you support somebody by talking to the press? You don't.

25 But yet, first news on this. Would this have made 02:27PM

1 news? Yeah. First news is it was a tragic accident. And
2 let's talk about that, because the defense focused upon that a
3 lot. Hey, guess what? Do we deny that this would have
4 attracted public attention even without Sheriff Joe? Of course
5 not. 21 dogs died. Their owners were hurt. Their owners 02:28PM
6 wanted it investigated. Would have there been publicity? Yes.
7 That's like saying, hey, would there have been a fire if I
8 decided to start my backyard barbecue? Yeah. However, if
9 somebody dumped it over and poured fire over it, it's going to
10 be a much bigger fire. And that's what happened in this case. 02:28PM
11 Would there have been publicity? Sure. Would it have died
12 down but for Sheriff Joe releasing a bunch of press releases
13 including pictures of the dead dogs? It would have died down.
14 I will tell you why it didn't die down, because Sheriff Joe
15 wouldn't let it die down, and then these kids were indicted. 02:28PM

16 22 minutes. September 9th, 2014. What did Sheriff
17 Joe do? Even though he wasn't doing it for purposes of
18 publicity, he claims, he gets before the press. It makes state
19 news, national news, then international news. Quote, "We're
20 recommending to the county attorney that 21 felony charges be 02:29PM
21 pursued against the four suspects in this investigation." This
22 is the film that I started the case with. Sheriff Joe says,
23 "I'm very confident that we have the proper evidence. And I
24 will tell you what, there is a law. Anyone knowingly or
25 intentionally, and I'm going to give you the crux of this case, 02:29PM

1 that neglects, you know, animal cruelty. And the key here is
2 the failure to provide, food, water, and shelter." He gets up
3 and he speaks to the press for 22 minutes, says that he has the
4 proper evidence that my clients have perpetrated 21 serious
5 felonies. But yet when I ask him for one fact after years, one 02:30PM
6 fact that supported his claim that he was very confident, quote
7 unquote, that he had the proper evidence, quote, unquote, that
8 my clients had perpetrated 21 felonies, he had nothing. That
9 didn't -- and how do you communicate? He says, oh, I was
10 trying to inform the public. Yeah. He was trying to inform 02:30PM
11 the public. He was trying to inform the public of something
12 that would create a lot of attention. He wasn't trying to give
13 them factual information about what my clients did wrong
14 because he never gave them anything specific. And even though
15 everyone admitted that the case wasn't about food, water, or 02:31PM
16 air conditioning, that's what he talked about.

17 So the evidence demonstrates that Sheriff Joe was in
18 it for the publicity. That's further evidenced by what
19 happened when the case was dismissed. When the case was
20 dismissed, what did Sheriff Joe do? Once again, that was the 02:31PM
21 short video that you saw after the charges had been dismissed.
22 What did he do? He got up before the cameras again and he said
23 that he was confident the case would be re-filed. That shows
24 that he had a commitment to prosecute this case even after the
25 county attorney threw it out. That also shows that he could 02:31PM

1 not resist taking every opportunity that he possibly could to
2 derive publicity from this case on the backs of my clients.
3 That's not what a law enforcement officer is supposed to do.
4 That's not stopping crime or investigating crime. That's
5 actually just inflaming the public regarding two individuals 02:32PM
6 that he doesn't have any evidence regarding, two people that
7 not only are innocent because there's a presumption of
8 innocence, but the judge has also ruled there was no probable
9 cause as a matter of law. And guess what? He's not the first
10 one to conclude that effectively or in fact, because that's 02:32PM
11 what Bill Montgomery also concluded.

12 So Sheriff Arpaio, his emotional energy launched this
13 case. And it went as far as it did based upon Sheriff Arpaio's
14 emotional energy. Trombi, she testified that she briefed
15 Arpaio more about this case than any other case she had ever 02:33PM
16 worked on. I think I recollect her testifying that she briefed
17 Sheriff Arpaio seven times regarding the case. I'm absolutely
18 certain that she testified that she briefed him regarding this
19 case more than any other case. And she even was witness and
20 helped him prepare for one press conference. When I asked her 02:33PM
21 which press conference that was, she claimed she couldn't
22 remember.

23 Let's talk a little bit more about Trombi. Trombi was
24 a very incredible witness. Trombi was the lead investigator.
25 She also -- I asked her, do you remember, you know, Trombi 02:34PM

1 couldn't even get some basic facts right, things that should
2 have been immediately admitted. For example, do you remember
3 when I asked Trombi, hey, you know, Arpaio is the sheriff over
4 there, right? Isn't he your boss, I don't know. I think he
5 is. Well, I guess he is. Come on. Every law enforcement
6 officer at the county is a subordinate of the sheriff. He runs
7 the place. He's the one in charge. To deny, to be a deputy
8 sheriff and deny the sheriff is your boss, that's ridiculous.

02:34PM

9 Trombi also lied repeatedly, and she also clung to her
10 lies. And I will tell you why you should conclude that they
11 are lies rather than just mistaken beliefs, because they really
12 flew in the face of reality. And she didn't learn, claimed not
13 to have learned. When the county attorney threw her
14 recommended 21 felonies out did she learn from that? No. When
15 the judge said that there was no probable cause, did she learn
16 from that? No. She learned nothing. Would you do anything
17 differently, I asked her. Remember that was one of my last
18 questions of her. No. She learned nothing, even though her
19 indictment was thrown out by Montgomery. Her indictment was
20 deemed to have no probable cause by this very court. But she
21 lied way worse than that. She claimed, over and over again,
22 the SRP records, this is what she told Steinberg. She admitted
23 she told Steinberg that. Steinberg admitted Trombi told her
24 that. She claimed that the SRP records -- by the way, this
25 actual document is plaintiffs' Exhibit Number 20. It will go

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02:36PM

1 to the jury room with you.

2 She claimed that the SRP records showed the air
3 conditioning unit in the dog room was working all night. That
4 is absurd. I tell you, I'm not a rocket scientist. I don't
5 know if Ms. Trombi is. I do know this. She's not stupid. And
6 I asked her, well, hey, see all these peaks and valleys that
7 suddenly go dormant on the 20th unlike any other day? Doesn't
8 that kind of support Austin and Logan's claim that the A/C
9 broke? No. It doesn't support it. She testified over and
10 over again that the SRP records demonstrated that the A/C in
11 the dog room worked all night. She didn't say it was
12 inconclusive. You could say it was inconclusive. Hey, I don't
13 know. I didn't understand these records. I don't know.

02:36PM

02:37PM

14 She could also say, hey, you know what? I make
15 mistakes. I'm human. I initially didn't understand these
16 records when the case was being presented to the Grand Jury.
17 That's why I told the prosecutor that these records show the
18 A/C in the dog room was open all night. But now I know because
19 after I got the defense motion and read it, and after
20 Montgomery dismissed the case, and after the judge said there
21 was no probable cause, I understood it. So now I have it
22 straight.

02:37PM

02:38PM

23 But what did she continue to say? No. These still
24 show that the A/C in the dog room was working all night. That
25 is a lie. And that is ridiculous. But do you know why she had

02:38PM

1 to say that? Because she told Steinberg that and she told the
2 Grand Jury that. And I'm telling you, for a law enforcement
3 officer to admit they lied to a Grand Jury or made a
4 misstatement to a Grand Jury or made a big material factual
5 misstatement to a Grand Jury, that's something that puts a 02:38PM
6 bullet into a law enforcement officer's career. You do the
7 math on that. She couldn't take back what she told the Grand
8 Jury, what she told Steinberg. It could have hammered her
9 career so she decided to double down on it, even when it became
10 ridiculous. 02:39PM

11 Oh, and remember she testified, oh, there was still
12 some electricity being used and there was still a little bit of
13 peaks and valleys if you want to elevate them to that. Oh,
14 Yeah. Well, gee, did they say that the A/C in the whole place
15 or the electricity in the whole house was turned off? No. The 02:39PM
16 A/C in the east side of the house was still on. There was
17 testimony there was two refrigerators still on. Lights were
18 still on. The clock was still on. The fans were still on.
19 The wall A/Cs were still on. That would explain this.

20 Trombi got the defense motion. She looked at the 02:39PM
21 defense motion. You should look at it, too. It contains all
22 kinds of interesting information. One of the things it
23 contains, remember when Steinberg testified that she talked to
24 someone from SRP? Remember that? But she couldn't remember
25 what he said or what his name was. Steinberg also testified, 02:40PM

1 oh, I spoke to George Hogge. I just can't remember what he
2 said. Well, listen, the paper that convinced Bill Montgomery
3 to throw out the case actually has a statement from someone at
4 SRP. And he doesn't say the records show it was working all
5 night. To the contrary. He says that it went down by 37
6 percent. And another expert in that paper also said --

02:40PM

7 MR. LEONARD: Objection, Your Honor. This was all
8 excluded.

9 MR. MONTTOYA: It was not excluded. Your Honor gave a
10 limiting instruction which still holds.

02:41PM

11 THE COURT: I'm not clear what you are referring to.
12 Which exhibits?

13 MR. MONTTOYA: Your Honor, this would be plaintiffs'
14 Exhibit Number 2, the motion to remand that convinced Bill
15 Montgomery.

02:41PM

16 THE COURT: Okay. The limiting instruction I gave was
17 that the jury could read that to see what was presented as
18 grounds to remand the case but that the numerous exhibits
19 therein were not admitted for the truth of the --

20 MR. MONTTOYA: That's true.

02:41PM

21 THE COURT: -- and therefore, the argument -- the
22 objection is sustained. The argument is stricken unless it's
23 grounded in some other admissible evidence.

24 MR. MONTTOYA: Well, yes, Your Honor. It's grounded in
25 this exhibit which was admitted pursuant to stipulation.

02:41PM

1 THE COURT: That's good enough.

2 MR. MONTROYA: All you have got to do is you don't have
3 to be a rocket scientist to figure this graph out. Do you
4 remember Steinberg, remember I took her through each numeral
5 for the first few days of the SRP records and I went degree by 02:42PM
6 degree with her? I did that on purpose because I wanted you to
7 have confidence that these graphs are arithmetically,
8 mathematically accurate. By the way, you don't have to be a
9 genius to do them. The vertical line was kilowatt usage. The
10 horizontal line was time every 15 minutes starting at 12 02:42PM
11 midnight. You don't need to be a genius in order to figure
12 that out.

13 Interestingly, do you remember -- boy, this was really
14 irritating to me, at least, Steinberg: Oh, yeah, I remember
15 those SRP -- the SRP data. My supervisor and I actually 02:42PM
16 graphed out. Where is that graph? If she graphed it out and
17 it showed her something other than this, why didn't the defense
18 present it to you? Where is it? Remember I was saying, hey,
19 where did you get the file? She got it from a computer
20 database that I don't even have access to. She admitted that. 02:43PM
21 I'm not a prosecutor. I'm not a judge. Where is that graph?
22 Why hasn't the defense shown it to you? What are they trying
23 to hide from you?

24 Here's something else she talked about that Trombi
25 allegedly gave her. Do you remember she talked about another 02:43PM

1 chart? I couldn't really understand whether the chart reached
2 from the jury box down to the court reporter or even further
3 this way, but it was pretty big. Shy said she had it taped to
4 a wall. Where is that? What does it say? If it shows
5 something that helps their case they would have waved it in 02:44PM
6 your face. You know it. Look at the team they have. Five
7 people. Where are these documents? If they support their case
8 they would have shown them to you. They don't. That's why
9 they have hidden them from you. Do not trust them. Do not
10 trust Steinberg. If Steinberg were telling you the truth, 02:44PM
11 those documents would have been in front of you. She's the one
12 who mentioned them. She's the one who says they graphed this.
13 Then I wouldn't have to be using this graph. I'd be using her
14 graph.

15 But I tell you, because she admitted the numbers were 02:45PM
16 right, kilowatt hour by kilowatt hour, chronological hour
17 starting from 12 midnight, every 15 minutes, these are
18 accurate. But I tell ya, hate to say this, don't take any joy
19 in saying this, Trombi seemed like a pretty nice lady to me but
20 she lied. She lied when she said that showed that the A/C in 02:45PM
21 the dog room was working all night.

22 But I can tell you one thing, Steinberg is a double
23 liar, because I tell you, Steinberg was, I thought she was
24 pretty smart. Notice how free and easily she testified to you,
25 how she smiled? She's a very polished lawyer. She's very 02:45PM

1 polished. She is very experienced. She is very smart. But
2 yet, like Trombi, Steinberg also testified, oh, no. These show
3 that the A/C in the dog room was working all night. Even
4 though Sheriff Joe says no stone will go unturned, Trombi, hey,
5 if you didn't understand these records did you call someone
6 from SRP to explain to you? No. Were you remiss in that?
7 Yes. Probably. Then she later claimed she didn't know what
8 remiss meant.

02:46PM

9 Steinberg, oh, yeah, I spoke to someone from SRP.
10 Couldn't remember his name. Couldn't remember what he said.
11 What Bill Montgomery read from SRP convinced him to dump the
12 case. This convinced -- this would convince anyone that
13 Steinberg is a liar or an idiot. This would convince anyone
14 that Steinberg is -- that Trombi is really dumb or a liar. I
15 don't think they are that dumb. They didn't seem dumb to me.
16 They seemed really smart. They seemed really experienced.
17 They seemed as if they were polished and articulate. And
18 certainly, their lawyers aren't claiming that they are dumb.

02:46PM

02:47PM

19 Remember, their lawyers are claiming that they did an
20 excellent job and that they are competent professionals.

02:47PM

21 That's why you have to conclude they are liars. Because if, in
22 fact, they are dumb and they just didn't understand this stuff,
23 their lawyers would have said, hey, they made an honest
24 mistake. Why are you making a federal case out of it? But
25 that's not what their lawyers were telling you. They did a

02:47PM

1 competent, excellent investigation. And that's not true. That
2 is not true at all.

3 Now, what did this do? Then another thing, Trombi,
4 hey, Trombi, were you influenced by what Sheriff Joe did? Oh,
5 no. Let me tell you something. When your boss gets in front 02:48PM
6 of the world, just think of it. We have all had bosses. When
7 your boss gets in front of the world and says something is
8 scarlet red, do you really want to prove your boss wrong by
9 telling the world that it's baby blue? When Sheriff Joe really
10 went on a limb when he said he was very confident that he had 02:48PM
11 the proper evidence for 21 felony counts, do you think that
12 Trombi wanted the limb to break so Sheriff Joe would fall on
13 his face? No way. Who would want to make their boss look like
14 a fool that way? That's not what good team players do. And
15 Trombi was part of a team with Sheriff Joe, because they 02:49PM
16 repeatedly met regarding the case more than any other case.

17 Now, so you can't believe Sheriff Joe, Steinberg, or
18 Trombi, because Sheriff Joe didn't know anything other than his
19 parade of crimes, his rhetorical parade of the crimes my
20 clients allegedly committed and he had no facts to support. 02:49PM
21 Trombi and Steinberg insult your intelligence by claiming that
22 this SRP data shows the air conditioner in the dog room was
23 working all night. That is an insult, I submit, to your
24 intelligence. But it's compounded because another lie that
25 Trombi told Steinberg and Steinberg repeated to the Grand Jury, 02:50PM

1 and then Steinberg double downed on and repeated to you, was
2 what Hogge's report said. So it's not only they are lying
3 about the SRP records but they are also lying about the Hogge
4 report.

5 Now, this is super important. This is the summary of
6 Mr. Hogge. First of all, do you remember when Mr. Hogge
7 volunteered that that was the dirtiest filter he had ever seen
8 there at the Appleby home of the Hughes? He didn't say that in
9 his report, but he blurted it out to you as fast as he could
10 because he's biased. But he also concluded in his summary that
11 a plugged filter will cause the internal filter to freeze and
12 render the A/C completely ineffective. Now, this shows that
13 Steinberg lied to you. Do you remember when I asked her, hey
14 you have an A/C at your house? Then she smiled at you and said
15 she actually had two, like the Hugheses, one A/C for one side,
16 one for the other side. I asked her, what is the purpose of
17 the A/C in the hot Arizona summer, June? She said to cool the
18 house. Well, if your A/C wasn't blowing out cool area in June
19 in the summer in Phoenix, would you say it was working? She
20 said no. Then when I asked her, hey, do you think the Grand
21 Jury probably had the same definition of working that you do?
22 She said yes. Yet she continued to say that Hogge said the A/C
23 was working all night in the dog room. That's not what this
24 says. It says, and I'm not making this up, very likely, the
25 unit completely ineffective. Hogge seemed like a nice guy to

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1 me, but I'll tell ya, he ain't much of a scientist. Because I
2 asked him some questions and the answers that he gave me were
3 very, very problematic.

4 First of all, it's funny. Hogge is supposed to be the
5 expert regarding A/Cs but he says in the his report technical 02:52PM
6 consultant Ron Ballard inspected the system that served the
7 west side of the house. If he really were the expert, why
8 didn't he do it himself? Why did he bring this Ballard guy?
9 And remember Ballard, his resume. He's -- and hey, my mom was
10 a teacher, so I'm not cutting down teachers. He had a Bachelor 02:53PM
11 of Science in elementary ed, a master of science in elementary
12 ed. He's not an engineer. But do you remember when I also
13 asked him about how much air was getting into the dog room and
14 I asked him, well, how many, you know, how much is this amount
15 regarding the airflow? And he said he didn't know. Remember 02:53PM
16 when they measured, yeah, there it is. Thank you, God. I
17 found it. Cubic feet per minute. With the doors open, the
18 amount of air rushed into the dog room was 262 with both doors
19 open. Both doors open, 262. Come on. That means the air is
20 flowing through there freely. With the doors closed, it didn't 02:54PM
21 go down to nothing, like an airtight room would go. Still 119
22 cubic feet of air per minute. 119 cubic feet of air per minute
23 was being pushed into that dog room.

24 And I asked him, hey, listen, was that enough for the
25 dogs? And he didn't know. Of course he didn't know. I asked 02:54PM

1 him, are you an atmospheric scientist? No. Are you a
2 veterinarian? No. Are you a biologist? No. I'm telling you,
3 this is a biased report because these two guys rendered all
4 kinds of opinions that they were not qualified to render. I
5 tell ya, they blurted out things that weren't even true that 02:55PM
6 they never said before just to prejudice you. I challenge you.
7 Read this report. It's Exhibit 30P. Look for it in there to
8 see if it analyzes the SRP data. You will find that it
9 doesn't. But I tell ya, Hogge, as soon as he can blurt out,
10 oh, if, in fact, the coil was frozen it would use more 02:55PM
11 electricity. He blurted that out. That's not in his report.
12 That's not what he said here.

13 MR. LEONARD: Your Honor --

14 MR. MONTOKA: Nevertheless, he blurted it out.

15 MR. LEONARD: I object to that. That was a response 02:55PM
16 to the Court's question of Mr. Hogge.

17 MR. MONTOKA: So what?

18 THE COURT: The jury can draw on its memory as to
19 whether he testified to that. Overruled.

20 MR. MONTOKA: I admit that. That was in response to 02:56PM
21 the Court's question. It wasn't in his report and he blurted
22 it out. And there's no -- and it appears to -- how could he
23 know that without looking at the SRP records? He made this
24 report without looking at the SRP records. Look in this
25 report. He doesn't talk about the SRP records once. Why did 02:56PM

1 he render a report without looking at the SRP records, without
2 looking at the data first? That's why I don't trust his
3 report. Because a scientist -- and engineers are scientists.
4 First get all the facts, then render the decision. First
5 collect the data and then render the decision. That wasn't
6 done in this case. That wasn't done by Hogge. That wasn't
7 done by Steinberg. That wasn't done by Trombi. When they
8 wanted to talk to Logan and Austin, let's talk about them a
9 little bit, or a lot. What evidence is there that Logan Brown
10 is a liar?

02:56PM

02:57PM

11 THE COURT: Counsel, how long do you have to go? It's
12 been an hour.

13 MR. MONTROYA: Your Honor, I probably have another 20,
14 25 minutes to go. I'm going to try to rush it up.

15 THE COURT: You are already beyond the estimate you
16 gave me.

02:57PM

17 MR. MONTROYA: I apologize, Your Honor.

18 THE COURT: Make it another 15 minutes.

19 MR. MONTROYA: Understood. Thank you.

20 Logan Brown, what evidence is that she's a liar? What
21 evidence is there that the A/C didn't break down, like she
22 said? What evidence is there that she had no reason to believe
23 that she was putting the dogs in harm way when she put them in
24 the dog room? You saw her testify. She's never even received
25 a speeding ticket. She has no history of criminality. She has

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1 no history of dishonesty. Why disbelieve her? Why recommend a
2 21-felony count indictment without even talking to her? Hey,
3 listen, if Sheriff Joe were waving pictures of someone you knew
4 and accusing them of felonies you would want your lawyer
5 present before you spoke to them, too. There's nothing
6 unreasonable about that.

02:58PM

7 Austin Flake. What evidence is there that he's a
8 liar? He said that he went into the room. The dogs were dead.
9 The A/C wasn't blowing. It was about 100 degrees in there.
10 What evidence is there that he lied? He's never been accused
11 of anything before, just like Logan. Why not take their word
12 for it? Why not presume them innocent until there's evidence
13 that they are guilty? And, in fact, the objective evidence is
14 that they are telling the truth. This pretty much fits, these
15 lines fit that the A/C stopped in the dog room.

02:58PM

02:59PM

16 Look, it also fits just like Logan and Austin said. 6
17 a.m. in the morning they turned off all the electricity in the
18 house. The objective evidence supported what they said. Their
19 very lives supported what they said. Why wouldn't these
20 powerful law enforcement officers, these government officials
21 listen. There was no hurry. No bomb was about to explode. I
22 understand, terrorist has a bomb that's going to explode you
23 have got to do something quick. That's not true in this case.
24 Why didn't they believe them? Why are they continuing to lie?
25 Steinberg, I can tell you why she would lie, or contort her

02:59PM

03:00PM

1 brain in an indefensible way, because if you know someone lies
2 to a Grand Jury and you are a lawyer, boy, I will tell you,
3 that would hurt. If you -- hey. Let me tell you something.
4 Lawyers are super busy. Remember I asked her how many cases
5 she had and she couldn't tell me, but she told me she was
6 working really hard. Remember I asked her how much time she
7 had spent on this and she couldn't tell me. She could tell me
8 that it wasn't full time, but she couldn't tell me how much
9 time she spent. You know what probably happened? Happens all
10 the time. The lawyers in the room know this, and other people
11 know this, too. Sometimes you get too swamped to do your own
12 work so you rely on what your assistant tells you on the way to
13 the Grand Jury room. That's why Steinberg parroted everything
14 that Trombi said, because that's where she got her information
15 from. She admitted that. She got all of her information from
16 Trombi. Some of it was false. It was submitted to the Grand
17 Jury. And guess what happened? Bill Montgomery got the
18 defense motion, Exhibit 2. And finally, finally a government
19 official, and that's Exhibit 13, finally a government
20 official -- I see it -- had some courage to look at the facts.
21 And what did he do? After thoroughly reviewing the records and
22 fairly considering the points raised in defense motions, the
23 theory of the case initially presented to the Grand Jury did
24 not take into account the possibility that there were issues
25 with the air conditioning unit.

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1 And what did the defense motion say? Read it. The
2 A/C broke. The evidence demonstrates it. Then Trombi lied
3 about it to back up her boss. And then there was an
4 indictment. Let's talk about the indictment. The indictment
5 was devastating. Imagine being indicted for 21 felonies when
6 you are 20 and 21 years old. That's got to knock your spine
7 right out of your body. Is there any doubt that anyone would
8 be depressed by that; that anyone would be devastated by that;
9 that anyone's world would be rocked by that? Is there any
10 surprise that for the first time in Austin's life he's on an
11 anti-depressant, he's on anti-anxiety medication? His dad is a
12 famous guy. His family is dragged into the press. Is there
13 any doubt that that would ruin your emotional life? Both of
14 his parents went to BYU. He was proud to be going there.
15 Honor hold, can't take any more courses, has to come back to
16 Arizona in humiliation.

03:02PM

03:03PM

03:03PM

17 Logan testified, hey, she did have some anxiety when
18 she was in high school. She overcame it and gave up that
19 medication while in college after this happened. She's back on
20 it. Do you remember when Mr. Hiller -- I'm glad he did that.
21 I didn't have time to. He went to her deposition where Logan
22 testified that she cried all night, had these panic attacks.
23 Was there any doubt that happened? For the first time in her
24 life, Logan, who never had a speeding ticket, fails in school.
25 That was devastating to them. There's no evidence to the

03:03PM

03:04PM

1 contrary. It would be devastating to anyone. That's why
2 Trombi can't be wrong. That's why Arpaio can't be wrong.
3 That's why Steinberg can't be wrong. But they were wrong. And
4 the depth of their error is revealed by the fact that they
5 won't even admit it to this day.

03:04PM

6 I'm going to talk briefly about the jury instructions.
7 Hey, this is an important one. There we go. You have to
8 decide this case based on the evidence. Where's the evidence
9 that they did anything wrong? You know what's really ironic?
10 All the talk about the A/C unit, whether it was on or off,
11 Trombi admitted it wasn't their problem in the first place. So
12 even if it were on, so what? They weren't responsible for it.
13 Steinberg admitted that, too.

03:05PM

14 Now, Sheriff Joe definitely had a desire for the
15 proceedings to be initiated. He got on television for 22
16 minutes, saying he had the proper evidence and we're
17 recommending it. Trombi hand-walked her recommendation to
18 Steinberg. Steinberg testified, yeah, Trombi wanted me to do
19 it. The fact that Arpaio and Trombi wanted the prosecution is
20 best evidence, perhaps, by the fact that after it was dumped by
21 Bill Montgomery, once again, Arpaio is back in the news urging
22 that it be filed. Trombi, her indictment's dumped. She
23 lobbies Steinberg's boss to reinstate it unsuccessfully. They
24 definitely wanted it.

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25 In considering whether or not there was an independent

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1 decision to prosecute, these instructions also say you should
2 consider whether or not the prosecutor withdrew the prosecution
3 because the defendant failed to present facts.

4 THE COURT: It says you may consider.

5 MR. MONTTOYA: May consider. That's correct, Your
6 Honor. And I have very little time, so you know -- you can
7 read these instructions for yourself. And the judge is right.
8 It does say "may." But I tell you, Bill Montgomery's decision
9 to withdraw the indictment is super telling, and it shows that
10 he had no confidence in what Steinberg did, in what Trombi
11 said.

12 And remember when considering whether or not Steinberg
13 and Trombi -- or Steinberg exercised independent judgment,
14 that's not our burden of proof. They have to prove that by a
15 preponderance of the evidence. And the only evidence that they
16 have that Steinberg exercised independent judgment is Trombi
17 and Steinberg. Do not believe them. They are the ones who
18 tell you that this shows that the A/C in the dog room was
19 working all night. They are the ones who tell you that a
20 frozen A/C that is rendered completely ineffective is still
21 working. Yeah, just because you can turn your engine over but
22 it doesn't move, oh, that means your car is still working, sir.
23 Yeah, right. Ma'am, your car is still working. The engine is
24 on. It won't move, but it still works.

25 How were my clients hurt? We have discussed that very

1 badly. Here's the form of verdict. This is the form that you
2 use to actually render your decision in this case. Here's what
3 you need to do with it. You need to rule unanimously in favor
4 of the plaintiffs. Now, how much you award them, I don't know.
5 That's your job. I do not know how much you should award them. 03:08PM
6 My only suggestion in that regard is make it an amount that
7 doesn't trivialize what they suffered, and make it an amount
8 that the defendants and Sheriff Arpaio, wherever he is, doesn't
9 laugh about, oh, yeah. It was nothing. No big deal. Got away
10 with it. It shouldn't be a trivial amount. It should be an 03:09PM
11 amount that reflects the severity of the emotional trauma that
12 my clients suffered through no fault of their own.

13 You know, I tell you, when I was starting my legal
14 career I went to a judge. He was really smart. He's retired
15 now. And he told me -- and I asked him for advice, because I'm 03:09PM
16 kind of naive. And I said do you have any advice for me,
17 Judge, going out there into the real world? You know what he
18 told me? No good deed goes unpunished. I will tell you, I
19 thought he was cynical by telling me that and I was
20 disappointed that that was his advice. But the only thing that 03:10PM
21 these kids could have done to avoid what happened to them is
22 told Logan's parents, no. No, we can't help you mom and dad
23 because something might happen. That's all they could have
24 done to avoid this. Nothing had ever happened to those dogs
25 before. There's no evidence that anything happened to those 03:10PM

1 dogs since. They did nothing wrong.

2 Did anyone -- and I'm going to shut up and sit down.
3 Did anyone apologize to them? Did anyone say, hey, we made a
4 mistake. Remember that saying, even a dog knows the difference
5 between being kicked and tripped over? It's a lot harder 03:10PM
6 when -- the hit is a lot harder, the pain is a lot more intense
7 when you are kicked. When it's coupled with an apology, hey,
8 listen, I didn't mean to kick you. I tripped over you. That
9 makes it easier to handle. But was there any apology from Joe,
10 Sheriff Joe? Was there any apology from Detective Trombi? She 03:11PM
11 would have done nothing differently. Was there any recognition
12 of responsibility from Steinberg? No. I think I did
13 everything right. Are you embarrassed that the only indictment
14 that you have ever rendered that's been thrown out was thrown
15 out and ruled by the judge to lack probable cause? Are you 03:11PM
16 embarrassed by that? No. How credible is that, that a lawyer
17 would not be embarrassed when her indictment is thrown out by
18 her boss and that when a federal judge said that her indictment
19 is not supported by probable cause. How believable is a
20 witness who would testify to that? 03:11PM

21 Thank you.

22 THE COURT: All right. We'll take a short recess so
23 everyone can be fresh for Mr. Leonard's argument. We'll be in
24 recess until 3:30.

25 All rise for the jury. 03:12PM

1 (Jury out at 3:12 p.m.)

2 THE COURT: The record will show the absence of the
3 jury.

4 Mr. Montoya, you went way over estimate. We had to
5 take a break for the reporter. You took an hour and 40 minutes 03:12PM
6 I couldn't take it in the middle of your closing. It's not
7 fair to the other side. So that's why I had to set the limit.
8 Well beyond the estimate you gave me.

9 MR. MONTOKYA: It is, Your Honor, and I'm sorry.

10 THE COURT: Well -- 03:12PM

11 MR. MONTOKYA: I was doing the best I could rushing
12 through it.

13 THE COURT: I always take a break before the next
14 lawyer so he can have fresh attention from the jury.

15 MR. MONTOKYA: And, Your Honor, we have been waiting a 03:13PM
16 long time for this. And you know my clients have a lot at
17 stake.

18 THE COURT: I know, but shorter arguments are better.

19 MR. MONTOKYA: I think you are right, Your Honor. I
20 will take that to heart. 03:13PM

21 MR. LEONARD: Your Honor.

22 THE COURT: Yes.

23 MR. LEONARD: Mr. Montoya, I believe, told the jury
24 that they ought to make an award to send a message which is
25 clearly -- 03:13PM

1 THE COURT: I was listening for that and I didn't
2 think he said that. He was telling them not to be trivial. I
3 don't think he crossed over that line.

4 MR. MONTTOYA: I didn't, Your Honor. Actually, there's
5 a Supreme Court opinion regarding it that I think demonstrates
6 what I did is appropriate as our own Justice Sandra Day
7 O'Connor has observed.

03:13PM

8 THE COURT: I'm not worrying about that. I'm worried
9 about our law. I was aware of the boundary and I think you
10 stopped short of it.

03:13PM

11 MR. MONTTOYA: Thank you.

12 (Recess from 3:13 p.m. until 3:31 p.m.)

13 THE COURT: Please be seated. The record will show
14 the presence of counsel, the parties, and the jury.

15 Mr. Leonard, you may proceed.

03:31PM

16 MR. LEONARD: Thank you, Your Honor. Good afternoon.

17 You know, I don't know -- well, the lawyers among you
18 probably know this. But I don't know if you know how
19 frustrated and antsy we lawyers get. You know, we get to speak
20 to you briefly at the beginning of a case and then we sit and
21 listen and ask questions and listen to others ask questions and
22 don't get to talk with you until now. And we want to, you
23 know, no. I have got to tell them this. I want them to know
24 this. I want to tell them that. And we can't do it. But this
25 is an opportunity we have, and that I have, and I'm happy to

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03:32PM

1 have, to talk to you about what you heard over the past several
2 days.

3 Couple of things that Mr. Montoya told you that I want
4 to tell you I totally agree with. I totally agree with his
5 telling you that we are fortunate to have the kind of system of 03:32PM
6 justice that we have in this country. And it's -- I don't know
7 if it's a rarity, but it's certainly not typical. And you all
8 are and have been a part of that. And if somebody who wants to
9 file a lawsuit, as the plaintiffs have in this case, they are
10 perfectly entitled to do it. And it works its way through the 03:33PM
11 justice system, and the result is what the result is. I agree
12 with Mr. Montoya that everybody has a right to sue the
13 government. You are the government. You have a right to sue
14 the government.

15 I agree with Mr. Montoya that we ought to be focusing 03:33PM
16 in this case on the real issues. I absolutely agree with him
17 when he tells you that. Where I disagree with him is he has a
18 very different view of what the real issues are. And I'm going
19 to try to briefly, I hope, tell you what we think the real
20 issues are. 03:34PM

21 First of all, I'm not going to attack anybody. Mr.
22 Montoya told you that Marie Trombi is a liar; that she's either
23 dumb or a liar. He told you that Shawn Steinberg, the
24 prosecutor, is a double liar, she's either a liar or an idiot;
25 that Mr. Hogge is biased; that -- I don't know why he didn't 03:34PM

1 mention Dr. Mangone. We're going to talk about Dr. Mangone and
2 his conclusions. I guess I'm thankful that he didn't attack
3 Dr. Mangone.

4 So you have heard Mr. Montoya tell you why he thinks
5 you, the jury, ought to determine that Maricopa County should 03:35PM
6 pay the plaintiffs some amount of money. I'm going to try to,
7 and I hope to, tell you why we think that shouldn't happen.

8 First of all, to repeat a preliminary but really
9 important point that I made when I spoke to you in our opening
10 statement, and what the judge has instructed you, this case is 03:35PM
11 not about personalities, popularity contests, who has more
12 publicity than somebody else. It's a claim about a case, a
13 claim of malicious prosecution. That has a very specific
14 meaning, and I hope in a few minutes to talk to you about more
15 of that meaning than you heard in Mr. Montoya's argument. 03:36PM

16 It's a claim about malicious prosecution; not about
17 whether a crime was committed but a claim of malicious
18 prosecution, which has very specific requirements for which you
19 are charged with considering the evidence, the actual evidence.
20 Not conjecture, not guess work, not speculation but the 03:36PM
21 evidence that you heard. And the evidence that you heard is
22 evidence that you can and should consider.

23 So when I talked to you last, I think it was last
24 Tuesday, here's what I suggested to you the evidence would
25 show. Because you are certainly entitled to take what each of 03:37PM

1 us said in our opening statements and to ask yourselves, hey,
2 did this get demonstrated? So I think what I suggested to you
3 the evidence would show is that Austin and Logan Flake assumed
4 responsibility for at least 28 dogs at a kennel business being
5 run by Ms. Flake, now Ms. Brown's, parents. On the night of 03:37PM
6 June 19th of 2014, those dogs were placed in a 9 by 12 room
7 that was too small and totally inadequate. And, by the way, as
8 you saw, we're talking about a room that is maybe the jury box
9 up until the water pitcher and almost back from the front of
10 the box to the wall. 28 dogs, including some big heavy dogs. 03:38PM

11 I told you that we would show that 28 dogs died while
12 they were being cared for by the plaintiffs; that MCSO, the
13 sheriff's office, was not called right away, but there was
14 significant publicity about the incident by the press and on
15 social media before there were any kinds of press releases from 03:38PM
16 MCSO; that MCSO's animal cruelty unit conducted a pretty
17 thorough investigation. Exhibit 30, which you will be happy to
18 know you are not going to have to take with you into the jury
19 room, is a copy, was identified by Detective Trombi, is a copy
20 of the MCSO investigative file. 03:39PM

21 I told you that Detective Trombi and MCSO believed
22 that the charges were supported by the evidence that was
23 uncovered. I told you that then Sheriff Arpaio didn't
24 interfere with the investigation; that MCSO and Sheriff Arpaio
25 made public announcements that were appropriate to the case; 03:39PM

1 that he, in particular, relied on the deputies in the animal
2 cruelty unit to reach its conclusions, didn't interfere with
3 those conclusions, didn't tell him what those conclusions
4 should be; that the MCAO prosecutor in charge of the case
5 reviewed the file in detail, in full, with all of the
6 information; that she was aware then of no information that was
7 withheld. It's all in there. She was aware then of nothing
8 that was misrepresented to her. She is aware today of nothing
9 that was withheld. She is aware today of nothing that was
10 misrepresented to her.

03:40PM

03:40PM

11 She was not pressured by MCSO to pursue a prosecution.
12 She wasn't mislead by MCSO as to the facts and the evidence and
13 that the County Attorney's Office made its own independent
14 decision that the evidence met their charging standards.

15 Sheriff's office doesn't have charging standards. They are not
16 a prosecuting agency. They do an investigation. Ms. Steinberg
17 testified that she believed that MCAO's charging standards were
18 met, that there was not only a reasonable likelihood of
19 conviction but she was more convinced than that.

03:40PM

20 So that's what I told you last Tuesday, and I told you
21 that kind of the nutshell summary was sheriff's office
22 investigated the case, turned its investigations and
23 recommendations over to the prosecutors at the county
24 attorney's office, the county attorney's office did its own
25 analysis of the case, made its own independent determination of

03:41PM

03:41PM

1 whether or not they should pursue a prosecution.

2 So that's what I told you last week you would hear. I
3 think that's what you did hear. So let me try to review,
4 briefly, I hope, the evidence. The judge has instructed you
5 that in order to find malicious prosecution, and again, I hate 03:42PM
6 to keep repeating it, but it's the only issue in this case,
7 malicious prosecution, you would have to find that the
8 defendant initiated or took an active part in the prosecution
9 of the criminal action. The defendant, not being the county
10 attorney's office but being the sheriff and the county, 03:42PM
11 initiated or took an active part in the prosecution.

12 The judge has told you that the defendant initiated or
13 took an active part in the prosecution if one of two things
14 happened: One, and Mr. Montoya read you and showed you a part
15 of this. Maybe I will put it up here. The part Mr. Montoya 03:43PM
16 read you was, the defendant initiated or took an active part in
17 the prosecution if his desire to have the proceedings
18 initiated. I should -- I think he paraphrased, told you it was
19 the sheriff's desire to have the proceedings initiated.

20 Well, Shawn Steinberg, the prosecutor, told you that 03:44PM
21 police agencies, typically, they think they developed a good
22 case, they turn it over, they would like to have it prosecuted.
23 But that's not what the instruction is, and that's not what the
24 law is. If his desire to have the proceedings initiated
25 expressed by direction, request, or pressure of any kind was 03:44PM

1 the determining factor in the prosecutor's decision to commence
2 prosecution, that's one prong. They would have to show that
3 MCSO's desire to have the proceedings initiated expressed by
4 direction, request, or pressure of any kind was the determining
5 factor in the prosecutor's decision to commence the
6 prosecution. And I will come back to that, determining factor.
7 Or, the defendant knowingly furnished false information or
8 materially incomplete information to the prosecutor.

03:45PM

9 Now, the judge has also instructed you that the
10 defendants' desire to have the proceedings initiated was not
11 the determining factor in the prosecutor's decision to commence
12 the prosecution if the defendant made full and truthful
13 disclosure of all material and relevant facts known to him and
14 the prosecutor made an independent decision to prosecute.

03:45PM

15 So with respect to Sheriff Arpaio, the evidence says,
16 the evidence has told you that he didn't sign off on the
17 charging recommendation, the submittal to the county attorney's
18 office. He didn't approve or communicate the charging
19 recommendation. He didn't speak with the county attorney's
20 office about it. That was handled at, I hate to say a lower
21 level, but it was, in fact, a lower level. It was submitted by
22 Detective Trombi on August 25th of 2014. It was signed off on
23 by Sergeant -- her sergeant, Sergeant Lafko.

03:45PM

03:46PM

24 And, you know, Mr. Montoya told you, I'm going to try
25 not to get diverted on these things. But Mr. Montoya told you,

03:46PM

1 oh, she didn't know. She denied Sheriff Arpaio was her boss.
2 No, she didn't deny it. The question was asked who her boss
3 was. She tried to describe there's a hierarchy. There's her
4 Sergeant Lafko who signed off on the recommendation. There's a
5 lieutenant. Yeah, ultimately Mr. Montoya pursued her,
6 ultimately, I guess the sheriff is the boss of everybody at
7 MCSO.

03:47PM

8 Mr. Montoya also told you that Detective Trombi didn't
9 even know the statute. She is sitting there in the witness
10 box. She's asked about the statute, and she says, can I see a
11 copy of it? I would do the same thing. She's not a lawyer.
12 Lawyers don't memorize statutes. She has to see a copy of it.
13 Nothing out of line about that. Doesn't make her a liar.
14 Doesn't make her dumb. Makes her cautious.

03:47PM

15 So is there any evidence that the sheriff pressured
16 deputies to come to any particular result? No. Now, Mr.
17 Montoya argued to you that, yeah, what about that August 22nd
18 press conference? I'm sorry, it's not August 22nd. I get the
19 22s confused. It was a 22-page transcript of a September, I
20 think, 9 press conference, when the sheriff says, I think we've
21 got a good case. He thought they had a good case. Here's the
22 thing about that, though. That was two weeks after the
23 submittal had been made. It couldn't have pressured Detective
24 Trombi to submit anything because the submittal to the county
25 attorney's office had already been made on August 25th.

03:48PM

03:48PM

03:48PM

1 Mr. Montoya told you that the sheriff was out at the
2 house and couldn't identify any police -- said he wasn't doing
3 any police work but then they criticized him for not doing any
4 police work. He was there supporting his deputies. Okay. So
5 what?

03:49PM

6 So the investigation is done. It includes work done
7 by Mr. Hogge with assistance, yes, assistance from Ron Ballard
8 who, while he may not have -- whose field is air conditioning,
9 and his background may have been in education, so what? He had
10 years of experience in air conditioning and there was no
11 effective challenge to anything he came up with, anything of
12 his that was included in the report. But they engaged Mr.
13 Hogge to investigate the claim that dogs had chewed through the
14 wires. That was the story that was given to the Maricopa
15 County Sheriff's Office. The dogs chewed through the wires.
16 That's why he was brought out. Did he not look at the SRP
17 data? No. The SRP data hadn't been provided until after he
18 did his report.

03:50PM

03:50PM

19 Maricopa County Sheriff's Office engaged Dr. Mangone.
20 His report is included in the 2,000 or so pages. Maricopa
21 County Sheriff's Office itself subpoenaed the SRP data. They
22 weren't running away from the SRP data. And by the way, all
23 this stuff about where are these charts and all of that, nobody
24 is questioning the SRP data. It is what it is. Maricopa
25 County Sheriff's Office subpoenaed that data. Now, when he did

03:50PM

03:51PM

1 his report Mr. Hogge didn't have it, again, because it hadn't
2 been received at that point. But they did acquire the data.

3 So what information was provided by MCSO to the county
4 attorney's office? Because that's really what we're talking
5 about here. Did MCSO mislead the prosecutor? Did they fail to 03:51PM
6 give the prosecutor full information? Did they hide
7 information from the prosecutor? That's what this is all
8 about. And the answer is, no, they didn't.

9 And, by the way, a lot of talk about the Grand Jury
10 and what was said to the Grand Jury and all of that, as the 03:52PM
11 instructions tell you, that's not the issue. The issue is what
12 was provided to the prosecutor. And I will get to that in a
13 minute. Sometimes I say I'm going to get to that in a minute.
14 I have too many things I am going to get to in a minute, but I
15 will try. 03:52PM

16 So MCSO, the sheriff's office, submits its findings,
17 its report, its recommendations to the Maricopa County
18 Attorney's Office. The submission quotes the Hogge report.
19 Let's take a look at the conclusions of the Hogge report. I
20 believe that's 30P. And I think it's 30P, Page 26. I say this 03:53PM
21 is their conclusions, because it's called conclusion. Mr.
22 Hogge concludes that the reported damage to the circuit caused
23 by the dog chewing on the Romex, the cable, could not have
24 possibly caused any interruption of the west HVAC system
25 operation. 03:53PM

1 Why does he say that? He says that because that's
2 really what he was hired to do. That was the pending story.
3 Then he says the west HVAC system was wholly inadequate for
4 this type of utilization of the dog room. This inadequate
5 condition was exacerbated by the airflow limitations with the 03:54PM
6 room, sealed room. And the fact that the HVA system was
7 neglected as to maintenance, including the basic requirement of
8 changing the filter. Those were his conclusions. One, dog
9 chewing through the cable couldn't have caused the unit to go
10 out. It wasn't even connected to that unit. And two, the west 03:54PM
11 HVAC system was wholly inadequate to use in that room, that 9
12 by 12 sealed room. That was included in the report, in the
13 investigative report that was submitted to the county
14 attorney's office.

15 Also included in the report that was submitted to the 03:55PM
16 county attorney's office, Dr. Mangone's report, his study and
17 report. Let's take a quick look at that. That's Exhibit 30I,
18 Page 004. I'm not going to -- I know that big paragraph before
19 the end of the page is his analysis of oxygen usage and
20 requirements and things like that. I'm not going to torture 03:55PM
21 you with reading through that. But I will point to something
22 in the next paragraph where he says it can, therefore, be
23 concluded that the deaths of the dogs were the direct result of
24 being placed into such overcrowded conditions.

25 Now, he told that to MCSO. He said that. That was 03:56PM

1 his report. They didn't tell him to say that. That was his
2 conclusion. Over on the next page, he says in the middle
3 paragraph, no reasonable or prudent individual would deem it
4 reasonable to house that number of dogs in a room of the
5 measured size, especially in light of the fact that there were
6 exposed wires in the room. Whether there were or not exposed
7 wires in the room I'm not sure anybody knows. But he says no
8 reasonable or prudent individual would deem it reasonable to
9 house that number of dogs in a room of the measured size.

03:56PM

10 So Mr. Hogge concludes that the room was inadequate.
11 Dr. Mangone concludes that the room was inadequate, regardless
12 of the air conditioning. And that's why the air conditioning
13 issue becomes somewhat of a side show, a red herring. Because
14 the room was inadequate no matter what. The Hogge report
15 supports that. The Mangone report supports that. The fact
16 that 21 dogs died supports that.

03:57PM

03:58PM

17 Now, plaintiffs have said, look at the Hogge report
18 where he says it's likely that a coil froze which, again, is
19 kind of a side issue, because the room was inadequate. But
20 couple of comments on that. First of all, that's different.
21 That's what plaintiffs are relying on now. Coil froze. I
22 don't know if you all understood Mr. Hogge's discussion of what
23 that means and the judge's questions about what that means, and
24 I'm not sure that I do, either. But he explained or tried to
25 explain what it means when the coil freezes. And plaintiffs

03:58PM

03:59PM

1 say, ah, you see, it was an accident, accident, that's the term
2 they constantly use, the coil froze, the air conditioning broke
3 down, it wasn't working. Therefore, they cannot be guilty of
4 these crimes.

5 But when questioned, I was just going to say I don't
6 know if you paid attention to this. Of course you paid
7 attention to it, because you paid attention to everything. I
8 know that. But when the judge asked him a question about that,
9 he explained that if the theory is that the air conditioning --
10 I'm sorry -- the electrical usage based on the SRP data
11 decreased what would happen if the coil froze is that the air
12 conditioning usage would go up because the motor would be
13 constantly going trying to push air through it. So you would
14 see something in the SRP data, which again, he didn't have when
15 he did this report. That's very, very different than what you
16 see on that exhibit.

17 Now, speaking of that exhibit, I think it's Exhibit 2
18 or -- I think it's part of Exhibit 2. Not sure if it was
19 marked also as a separate exhibit. But it is part of Exhibit
20 2, I think at Page 8. In an important way it doesn't make a
21 whole lot of sense if you are talking about the west air
22 conditioning unit, the one that cooled the dog room failing but
23 the east air conditioning unit not failing. Because if you
24 have, in these prior days, peaks and valleys showing supposedly
25 air conditioning going on and off, because the refrigerator

1 usage isn't going to change appreciably. Whatever else is
2 plugged in, lights aren't going to change that much, if you
3 have these peaks and valleys, the theory, I guess, is that
4 reflects the air conditioning usage. Well, if this difference
5 on the morning of June 20th is attributable to an air
6 conditioning unit, it must be attributable to both air
7 conditioning units, and yet the testimony is one worked and the
8 other didn't.

04:01PM

9 So if you don't see these peaks and valleys, and has
10 been suggested, I'm not sure to what extent the size of the
11 chart sort of minimizes the amount of ups and downs, but it's
12 certainly different from prior days, if that's explained by air
13 conditioning not going on and off, it's got to be both air
14 conditioning units, and yet the testimony is the east unit was
15 working fine. So it doesn't really make any sense. The SRP
16 data does not support the idea, the theory, that the west unit
17 alone failed. It simply doesn't.

04:02PM

04:02PM

18 Mr. Hogge, who knows something about this, said he
19 would concur with the statement. He thinks that the statement
20 that the air conditioning was working was accurate. Now, the
21 fact that it was working, that it did not become inoperative,
22 that it did not fail, doesn't mean necessarily that it was
23 going on. You may recall, if we look at a page out of Mr.
24 Hogge's report, I think it's Exhibit 30P at Page 5, the
25 configuration of the house and the dog room, if you recall

04:02PM

04:03PM

1 there's this 9 by 12 dog room, sealed. There is a bedroom next
2 door. The bedroom was not occupied. There was no air return
3 for the air conditioning in the dog room. It was in the
4 bedroom next door. The thermostat that operated that unit was
5 in the bedroom next door, specifically in a closet in the 04:04PM
6 bedroom next door. It could easily and likely have simply,
7 without anything wrong with the air conditioning unit, it
8 simply didn't know it needed to turn the air conditioning on.
9 The thermostat was set. It was a cool night. It was June but
10 it was a cool night. The thermostat was not in the dog room, 04:04PM
11 couldn't sense the temperature rising in the dog room with the
12 28 dogs in the room using up oxygen, becoming warmer, nobody
13 occupying the bedroom next door. As far as the thermostat
14 knows, everything is fine, and it doesn't turn the unit on.

15 That, by the way, as opposed to the theory of coils 04:05PM
16 freezing or something like that, that is consistent with the
17 SRP data. Because it may well be that not only the west air
18 conditioning unit but the east air conditioning unit simply
19 didn't need to go on. Now, did Detective Trombi necessarily
20 understand every nuance of all that? Not necessarily. Did she 04:06PM
21 lie about it? No. Was she dumb? No. And that isn't the
22 question. And I will come back to this.

23 Question is what did she communicate to the
24 prosecutor? Did she lie to the prosecutor? Did she withhold
25 information from the prosecutor? Whether she understood the 04:06PM

1 information or not, she told the prosecutor what information
2 they had like in this book. Shawn Steinberg, the prosecutor,
3 who was accused of being a double liar, or alternatively an
4 idiot, told you she received volumes of information from MCSO.
5 She received the entire investigative report, not bits and
6 pieces of it. You know, there were excerpts from Mr. Hogge's
7 report in the charging statement, in the submittal. There were
8 excerpts of it. There were excerpts of Dr. Mangone's report in
9 the submittal. But the entire report and the entire -- the
10 entire report of Mangone, the entire report of Hogge, were all
11 submitted and all of the SRP data were all submitted to the
12 county attorney's office.

04:07PM

04:07PM

13 So Ms. Steinberg told you she received volumes of
14 information from MCSO, including, she said, detective reports,
15 owner's logs, contracts, photos, the Hogge report, the Mangone
16 report, the SRP data. She told you also that she had questions
17 that she wanted followed up on. She asked MCSO those
18 questions. They responded to those questions. She was
19 satisfied with the answers. She told you she talked with Mr.
20 Hogge. She didn't even just read his report. She talked with
21 Mr. Hogge.

04:08PM

04:08PM

22 You know, talk about -- it's been suggested that,
23 well, she didn't spend any time on that. She had an assistant
24 do it, something like that. That isn't what happened. That's
25 not what happened at all. She talked to Mr. Hogge. She talked

04:08PM

1 to Dr. Mangone. She talked to SRP. She discussed the
2 submission with a team, including several levels up to William
3 Montgomery, the county attorney. She did her own analysis.
4 She reached her own conclusions. She and the team reached a
5 conclusion. And again, the issue here is not whether the 04:09PM
6 conclusion was right or wrong. The issue here is not whether
7 Mr. Flake and Ms. Brown were guilty of the charges that were
8 brought. Maricopa County Attorney's Office reached a
9 conclusion that their charging standards were met. They
10 thought the prosecution would be a good prosecution. They 04:10PM
11 thought they could get a conviction. And I think Ms. Steinberg
12 told you, you know, this isn't the first such proceeding that
13 she's been involved in.

14 So back to the instructions. In order to find
15 defendants liable for malicious prosecution, a number of things 04:10PM
16 have to be proven. The defendant initiated or took active part
17 in the prosecution; defendant acted for a primary purpose other
18 than to bring an offender to justice, and, by the way, there 's
19 no evidence of that. Criminal action was brought without
20 probable cause. Well, the Court has determined that there was 04:11PM
21 no probable cause. We can't question that. Plaintiff was
22 damaged by the criminal action.

23 So back to what I started talking about before, the
24 defendant initiated or took active part in the prosecution, if
25 one, his desire to have the proceedings initiated expressed by 04:11PM

1 direction, request, or pressure of any kind was the determining
2 factor in the prosecutor's decision to commence the
3 prosecution, it wasn't. Ms. Steinberg told you it wasn't. She
4 told you they made their own decision. She said police
5 agencies always want you to prosecute. If we concluded, she
6 said, if we concluded that there was not basis to bring the
7 charges, we wouldn't do it no matter who said anything; or two,
8 he knowingly furnished false or materially incomplete
9 information to the prosecutor. There is no evidence of that.

04:12PM

10 Asked whether she thought that anything was missing,
11 that MCAO was misled, that material information was omitted,
12 she said no, no, no. She -- you know, despite being accused of
13 being a double liar or an idiot, she took responsibility for
14 the charges. She said she didn't come here and tell you that,
15 oh, man, I wish they had told me something else. I would have
16 made a different decision. You know, I think they misled me.
17 I think they lied. You know, she could easily, I suppose, have
18 passed off responsibility to the sheriff's office. She didn't.
19 She sat here and she told you that she and the team, up to and
20 including William Montgomery, made the decision. They took
21 responsibility for it.

04:12PM

04:12PM

04:13PM

22 And the next sentence, again, of the instruction, the
23 defendants' desire to have proceedings initiated was not the
24 determining factor in the prosecutor's decision to commence the
25 prosecution if the defendant made full and truthful disclosure

04:13PM

1 of all material and relevant facts known to him and the
2 prosecutor made an independent decision to prosecute. That is
3 exactly what occurred. Detective Trombi told you that she knew
4 it was the prosecutor's decision. She acknowledged that. She
5 understood that. She thought she had a good case. She took no
6 steps to pressure the County attorney's office before the case
7 was presented to the Grand Jury. Did she seek an explanation
8 after the fact? Yeah. She told you she did because she
9 thought it was a good case, so she asked how come.

04:14PM

10 Keep in mind, though, that was after the fact. That
11 was after the Grand Jury returned indictments. Her going to
12 the county attorney's office saying, how come, can't possibly
13 influence the decision to prosecute, the county attorney's
14 decision to prosecute. It came afterwards.

04:14PM

15 Sheriff Arpaio, in the press conference from
16 September, also made that point repeatedly. Why don't we look
17 at Exhibit 8, starting on the first page at the bottom in the
18 lower left-hand corner. "We turned it over to the county
19 attorney for review, and don't forget that they had to make
20 sure they had the proper information and evidence to
21 prosecute." Up in the top right-hand corner, "I'm sure that
22 that office will review the evidence and we'll see what
23 happens. I'm very confident we have the proper evidence."
24 That's what Mr. Montoya pointed out to you. But he then
25 follows that with, "And, once again, the County attorney's

04:15PM

04:16PM

04:16PM

1 office will review our evidence."

2 And, by the way, the down at the top of the page in
3 the lower right-hand corner, when Mr. Montoya suggested to you
4 the sheriff had no idea what the issue was, notice he said,
5 "You have to understand that 21 animals died in a 9 by 12 room,
6 and there were others in there also. That is the crux." That
7 is the crux.

04:17PM

8 On the next page, 002, the lower right-hand corner up
9 at the top, "I don't think a 9 by 12 room with 28 dogs is
10 proper shelter to begin with." Over on the next page, Page 3,
11 top left, "But once again, it will be up to the county
12 attorney's office to determine whether there's enough evidence
13 for charges slash conviction."

04:17PM

14 And when asked, presumably by a reporter, "You say you
15 are confident. Explain to us why you are so confident." He
16 says, "Well, once again, I know my office did a thorough
17 investigation of two months developing the case. I know as far
18 as I'm concerned and my office is concerned, I know we did the
19 best we could to obtain proper evidence and now it will be
20 up -- if charges will be filed."

04:18PM

04:18PM

21 And then at the top right-hand corner of that page,
22 "I'm confident in the two months it took to put the facts
23 together, to gather the proper evidence, and now it's going to
24 be up to the county attorney to review it and it will be up to
25 him to file charges."

04:19PM

1 Referring also to the June 23rd press conference as
2 being some sort of publicity-seeking maneuver, and that's
3 Exhibit 4, he says, "Owners claim the air conditioning was cut
4 off after a dog chewed through some electrical wiring." That
5 was suspect. It wasn't true, simply wasn't true. It couldn't
6 have been. He says, on that same page, he says, "Some owners
7 were there when deputies arrived, all visibly upset as the
8 kennel owners and caretakers were questioned." Yes, they were
9 visibly upset, the owners were. They wanted an investigation.
10 They wanted answers.

04:19PM

04:20PM

11 Now, a suggestion was made, not a suggestion, a
12 statement was made to you that somehow this was an effort to
13 tie in Senator Flake. The sheriff didn't mention Senator
14 Flake. But before this June 23rd press release, not only had
15 the press reported this, not only had the press reported the
16 connection with the senator, but the senator's office had
17 released a statement. I believe that's 47. June 22nd, the day
18 before this first press release, "Fox 10 has learned from
19 multiple sources the son of U.S. Senator Jeff Flake and his
20 son's wife were in charge of caring for the 17 dogs who died at
21 Green Acre." Senator Flake's office released the following
22 statement: "I learned of this tragic accident yesterday. I
23 can't imagine the devastating loss these families are
24 experiencing. My heart goes out to the owners who lost their
25 beloved pets." His own office released a statement making the

04:21PM

04:21PM

04:22PM

1 connection.

2 Now, the assertion that the fact that the charges were
3 subsequently withdrawn and not re-filed proves anything, simply
4 not the case. Let's take a look at that press release from the
5 Maricopa County Attorney's Office, Number 13. Keep in mind,
6 what matters for a charge of malicious prosecution against a
7 police agency is what information they gave to the prosecutors,
8 not what information the prosecutors decided to present to the
9 Grand Jury. Different issue altogether.

04:22PM

10 So Mr. Montgomery says, "After thoroughly reviewing
11 the records and fairly considering the points raised in recent
12 defense motions, the theory of the case as originally presented
13 to the Grand Jury," the theory of the case as originally
14 presented to the Grand Jury, presented by the County attorney,
15 "did not take into account the possibility there were issues
16 with an air conditioning unit, said the Maricopa County
17 Attorney Bill Montgomery. This could impact the Grand Jury's
18 charging decision and how we might present a case to a trial
19 jury."

04:23PM

04:23PM

20 Look carefully at what it is he said. He didn't say
21 despite the suggestion, the implication presented to you that
22 it was something else, he didn't say we didn't get good
23 information from the sheriff's office. He didn't say the
24 sheriff's office lied to us. He didn't say that the sheriff's
25 office omitted information from its report to us. He didn't

04:24PM

04:24PM

1 say any of those things. He was talking about the county
2 attorney's theory of the case. That doesn't create a malicious
3 prosecution claim against the sheriff. Whatever it may mean
4 with respect to the county attorney's office, it doesn't create
5 a malicious prosecution claim against the sheriff.

04:25PM

6 So the publicity was heavy, intense, before Maricopa
7 County Sheriff's Office ever said anything. It was the media,
8 it wasn't MCSO, that linked these events to the senator. It
9 was the media, not MCSO, that inflamed the public. Basically,
10 MCSO communicated four times, maybe five if you want to include
11 the thing about the searching for the missing dog: Once when
12 the investigation began, June 23rd; once when the search
13 warrant was executed, July something; a couple of weeks after
14 the charging recommendation was made, September 9, I think; and
15 after the charges were dropped, December.

04:26PM

04:26PM

16 And, by the way, when you keep being shown, as we have
17 seen repeatedly through this trial, and you just were shown
18 again, that picture of the sheriff at the June 23rd press
19 whatever it was, holding up which has been characterized
20 throughout the trial and today as the sheriff showing pictures
21 of dead dogs to the media, you didn't see that in the picture.
22 What you saw was the sheriff holding up a sheet of photos. You
23 didn't see him show any pictures of dead dogs.

04:27PM

24 Could MCSO have, if it wanted publicity, and if it
25 wanted to link people and things and events, could it have done

04:27PM

1 things different? Yeah. It could have arrested Mr. Flake and
2 Ms. Brown. It could have run a continual stream of press
3 releases. Again, there were basically four. It could have
4 handled it a lot different, but it didn't.

5 Finally, defendants told you when they testified that 04:28PM
6 finding the 21 dead dogs was the worst day of their lives.
7 We're not going to dispute that. That may well have been. But
8 it was that event which was immediately -- first of all, there
9 were a lot of angry people. There were a lot of press reports.
10 It's a big deal. There was a lot of publicity. That was what 04:28PM
11 they told you was the worst day of their lives, not the
12 recommending of the criminal charges. Not the indictment. And
13 what made it so, I understand that, was the dogs and the
14 reaction. There was intense reaction. They were hurt and
15 upset by their experiences since the death of the dogs, yeah. 04:29PM
16 But that was the result of the death of the dogs. MCSO didn't
17 cause that. Maricopa County didn't cause it. The defendants
18 didn't cause that. They were hurt and upset because 21 dogs
19 died on their watch and there was intense reaction to it. The
20 media is still talking about it, yeah. I assume the media is 04:30PM
21 here because of this trial.

22 Finally, the judge has instructed you that the only
23 damages that could be awarded, if you decided that there was
24 liability on the part of the defendants, would be damages --
25 would be emotional harm and damage to reputation. I will tell 04:30PM

1 you, there's been no evidence in this case of any damage to
2 reputation. Nobody has come in and testified that they think
3 less of either Mr. Flake or Ms. Brown as a result of this. And
4 if there's been anything in the media about that, again, it's
5 been a result of the general publicity.

04:31PM

6 The critical point, were they hurt by these events, by
7 the death of these dogs? Sure. Nobody would deny that. Have
8 they suffered as a result? Yeah. But there's one claim and
9 one claim only in this case, and that is malicious prosecution.
10 And plaintiffs cannot establish malicious prosecution unless,
11 one, defendant acted for some purpose other than to bring
12 people they thought committed crimes to justice. And they
13 can't establish a case for malicious prosecution unless either
14 MCSO's desire, the sheriff's desire to have the proceedings
15 initiated by the prosecutor was the prosecutor's determining
16 factor; or the sheriff knowingly furnished false or materially
17 incomplete information to the prosecutor.

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18 None of those things occurred. And we hope that you
19 will consider that. We know you are going to give fair review
20 and fair consideration of the claims, of the defenses, and
21 reach a fair result. Thank you.

04:33PM

22 THE COURT: All right. The plaintiff may give a
23 rebuttal and then the jury will retire to deliberate.

24 MR. MONTROYA: May I have a moment, Your Honor?

25 THE COURT: Just take a minute.

04:33PM

1 MR. MONTROYA: Jeff Leonard just told you, anything
2 missing? It's all here. This is his exhibit, not mine. Just
3 a couple seconds ago you saw me. I was about to give it back
4 to him then I decided not to because he says it's all here.
5 Nothing is missing. Where's the chart that Trombi made? Part
6 of the instructions say that there has to be a full and
7 truthful disclosure. Full and truth truthful. Mr. Leonard
8 says this is it. Where's the chart that stretches from over
9 there to either over there or over here? It's missing. So
10 it's not full, which strongly suggests that it's not truthful.

04:34PM

04:35PM

11 The graph that Steinberg made. She testified she and
12 her boss made it. Where's that? This isn't full. This is
13 missing that, too. Suggest it's not truthful. They are hiding
14 something from you.

15 They keep on talking about the A/C. Oh, this doesn't
16 show the A/C went out, the west A/C went out? It shows it was
17 both -- now he's saying, for the first time, it's not in the
18 Hogge report. It's not anywhere else. For the first time now
19 Mr. Leonard has said, oh, the east A/C went out, too. Who
20 testified to that? Where's the evidence that the east air
21 conditioner went out too? There's no evidence of that. He
22 just made that up. This doesn't suggest that.

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04:36PM

23 Notice another thing that he omitted. Another big
24 zero. There's nothing. Remember I talked to you about Logan
25 and Austin's credibility? Why not believe them? Hey, listen,

04:36PM

1 they say they turned off the A/C at 6, or the electricity at 6
2 because of the sparking wire. They say that sometime after 11
3 p.m., because that's when they went in there the last time, the
4 A/C must have went out, must have gone out, because when they
5 got up in the morning it was super hot in there and the dogs
6 were dead and dying, why not believe them? They have never
7 lied before. They have no criminal background before. This
8 supports them. Why not believe them. Why call them liars?
9 That's evidence of malice. Malicious prosecution. The judge
10 has already said there wasn't any probable cause.

04:37PM

04:37PM

11 Here's what makes it malicious, that they suggest they
12 are liars even though they have no evidence that they are
13 lying. In fact, as I think everyone has to admit, all the
14 evidence is they are telling the truth. The records indicate
15 they are telling the truth. Hogge says that the system froze
16 up and was rendered -- it's very likely the system was
17 completely ineffective.

04:38PM

18 Here's something else that's kind of strange. You
19 know, in order -- they were abusing language. Do you
20 remember -- I remember years ago -- showing my age -- a
21 politician said it depends what "is" is. You have heard of
22 double speak. Oh, the A/C is working. They claim, oh, it's
23 working. But it's frozen. The coil is frozen and it's been
24 rendered completely ineffective. That is double speak. That's
25 evidence of malice. The strongest evidence of malice is the

04:38PM

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1 lack of evidence that these kids did anything wrong. The A/C
2 went out. God, why -- the only reason we're talking about why
3 the A/C went out is because it shows they are lying. Because
4 Trombi already had to admit that they couldn't be held
5 responsible for the A/C because it wasn't their house. They,
6 like most, hopefully, I hope my kids want to help me if I leave
7 town and I need them to take care of my house. That's all they
8 did wrong. Trombi admits that. Steinberg admits that. But
9 they are not responsible for the A/C, so why do they keep on
10 lying about this? They are trying to cover for what they did.
11 And what they did is wrong. And what they did is destructive.

04:39PM

04:39PM

12 The Hogge report, here it is again, Page 36. That's
13 the page that Mr. Leonard cited to you, or it's the conclusion
14 section. Let's look at that page. Because that page, I'm very
15 familiar with it. That page repeats what he said to begin
16 with.

04:40PM

17 This is the last page of the Hogge report. See
18 conclusions, comments, his stamp. He also speaks in the second
19 to the last page, he ends kind of where he began: A plugged
20 return filter will cause a number of problems including the
21 very likely condition of freezing, the interior coil freezing
22 and rendering the unit completely ineffective. And that's
23 exactly what he said at the beginning. But yet they tell you
24 that this is proof that the A/C was working in the dog room all
25 night. It's not proof of that. It's proof of the opposite.

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1 But why are they citing this as evidence against my
2 clients anyway? They keep on telling you about the Hogge
3 report, the Hogge report. You know what? The Hogge report is
4 irrelevant as to these two. Trombi admitted she wasn't blaming
5 them for the A/C system or the ventilation system. So the 04:41PM
6 Hogge report doesn't support any criminal charges against Logan
7 or Austin. And that's also true. Dr. Mangone didn't testify
8 to you. I don't know why. Hogge did. For some reason they
9 didn't bring him. I was kind of hoping they did because I had
10 a lot of questions for him. The judge asked a really good 04:42PM
11 question of Trombi in reference to the Mangone report: In my
12 opinion, the deaths were the direct result of the negligent
13 actions of the owners of Green Acre and the caretakers that
14 were on site the night of the accident. See that word, the
15 result of negligent actions. Well, guess what? The judge has 04:42PM
16 instructed you, as a matter of law in the probable cause
17 instruction, that negligence isn't enough to support a felony.
18 That's the reason why he said he found there was no probable
19 cause. You know what? The best evidence of malice is the lack
20 of evidence. Why would they prosecute someone for 21 felonies 04:42PM
21 without a shred of evidence other than for publicity or perhaps
22 Trombi's own independent agenda that she's a dog lover who
23 takes passion in her work. Let me tell you, people who are
24 passionate about their work, they are not the most objective
25 judges of whether or not other people are guilty of felonies. 04:43PM

1 Now, Steinberg did testify that she spoke to her
2 supervisors. She even testified that she spoke to Bill
3 Montgomery. And Bill Montgomery approved his office's seeking
4 an indictment from the Grand Jury. But do you remember I asked
5 her, it was just yesterday, you gave him all the information he 04:43PM
6 relied on when you gave the approval, right? Yes. Trombi gave
7 the bad information to Steinberg. Steinberg gave the bad
8 information to Montgomery. Junk in, junk out. Steinberg
9 admitted she could indict a ham sandwich, that even a lousy
10 prosecutor can indict a ham sandwich. They say that Bill 04:44PM
11 Montgomery's dismissal was irrelevant.

12 But he also says why he dismissed or why he asked the
13 Court. Remember the chronology of this. Logan and Austin's
14 defense lawyer files a big old fat motion, Exhibit Number 2,
15 with this data. And instead of responding to it, we oppose it. 04:44PM
16 We don't agree with it. What does Bill Montgomery do? He
17 files -- he directs Shawn Steinberg to file her own motion.
18 That's Exhibit Number 12, Plaintiffs' Exhibit Number 12. Here
19 it is. Remember that, State's Motion to Dismiss.

20 The government got the defense lawyer's motion, and 04:45PM
21 instead of opposing it with qualifications, or agreeing with it
22 with qualifications the government surrendered and actually
23 moved the Court to dismiss signed by Shawn Steinberg. There's
24 her electronic signature, as she admitted.

25 Now, oh, Mr. Leonard tells you, not very candidly, as 04:46PM

1 I hoped to show you, that oh, it's no big deal. It means
2 nothing. What did he just tell you? That Montgomery's
3 decision to dismiss wasn't a big deal. It wasn't a big deal?
4 If it wasn't a big deal why has that never happened to
5 Steinberg before? Guess what? It wasn't a big deal? Do you
6 think they would agree that it wasn't a big deal? The victims
7 of the false indictment thought its dismissal was a really big
8 deal.

04:46PM

9 MR. LEONARD: Your Honor, that isn't what I said.

10 THE COURT: It's argument.

04:46PM

11 MR. MONTTOYA: Now, here's what Bill Montgomery said,
12 once again: "After thoroughly reviewing the records and fairly
13 considering the points raised in recent defense motions, the
14 theory of the case initially presented to the Grand Jury did
15 not take into account the possibility that there were issues
16 with the air conditioning unit." Hey, well come on. Let's
17 take a look. Exhibit Number 2. Look at it when you go into
18 the Grand Jury room. It looks like this. You have seen it
19 before. Remember we were talking about Dennis Wilenchik,
20 attorneys for Austin and Logan Flake, motion to remand the
21 Grand Jury. Remember Trombi told you she pulled it off the
22 internet and read it? Well, God, what are the theories in
23 here? Here's the theory. Detective Marie Trombi not only
24 provided false testimony to the Grand Jury twice about this
25 under questioning by the prosecutor, but she provided false

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1 testimony when a grand juror asked her about this issue
2 directly.

3 MR. LEONARD: Your Honor --

4 MR. MONTTOYA: After immediately finishing testimony.
5 That's on Page 2 of the motion.

04:47PM

6 MR. LEONARD: Your Honor, this is a lawyer's argument
7 in here.

8 THE COURT: That's exactly what it is and that's
9 exactly what is permitted at this stage of the proceeding.

10 MR. MONTTOYA: Yeah. That's what it is. That's what
11 Bill Montgomery -- hey, listen, I'm not the one who dismissed
12 this case. Bill Montgomery did. And I'm not the one who
13 explained why the case was dismissed. Bill Montgomery did.

04:48PM

14 Not me. Don't get mad at me. I didn't do it. I'm not the
15 county attorney. I'm not the one who identified the defense
16 motion that in the very second page says exactly what I have
17 been saying: Trombi lied. That's why the county attorney
18 dismissed the case. But, yet, they tell you, it's not a big
19 deal. You know what that is? That's kind of like, oh, the A/C
20 was working even though the coil was frozen and it was

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21 completely ineffective. Oh, the charges against these poor
22 young people were dismissed voluntarily by the man in charge
23 but it wasn't a big deal. Yeah, right. That's double speak.
24 In order to believe them that is double speak and that shows
25 their dishonesty betrays their malice. Sheriff Arpaio -- he

04:49PM

1 also told you, Mr. Leonard, just got finished telling you, oh,
2 Sheriff Joe, he wasn't showing pictures of the dead bodies.
3 How can he say that? This is admitted into evidence. This is
4 Exhibit Number 18. "Then-Sheriff Arpaio holds up photos of
5 dogs found dead at the Gilbert boarding service in June of
6 2014."

04:49PM

7 THE COURT: Mr. Montoya, it's 10 minutes to 5, so you
8 have 10 more minutes.

9 MR. MONTOKYA: Yes. Understand. Thanks for the
10 reminder.

04:50PM

11 "Dog deaths at Gilbert boarding site. Sheriff Arpaio
12 holds up photos Monday, June 23rd, of dogs found dead." What's
13 that all about? That's exactly what he did on the Monday after
14 the dogs died. He used it as a platform for publicity without
15 any evidence. Couldn't even specify one shred of evidence when
16 I asked him. In his deposition, remember I said, remember in
17 your deposition I asked you if you could give us one specific
18 fact in support of your recommendation of 21 felonies? He said
19 no. Then after the passage of a year I asked him again, think
20 he would have prepared, thought maybe he would have something.
21 No, I'm not involved in the nuts and the bolts. Hey, come on.
22 Here's a common sense principle. If you don't know the facts,
23 sit down and shut up and let somebody else who does know the
24 facts speak. Don't get up there and say two young people who
25 had never been accused of criminality in their lives, you are

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1 very confident you have the proper evidence that they are
2 repeated felons and not have the facts? Come on, if you are
3 going to do that in front of the press and one of them is a
4 senator's son and it's going to be smeared all over the
5 internet, at least have some facts. People have cheat sheets.
6 I have notes. Before I got up here, won't surprise you, I made
7 notes. I made a summary to remind me. Why couldn't Sheriff
8 Arpaio do that? Because he only wanted publicity. He used
9 this as a publicity vehicle. That's why he had repeated press
10 conferences. That's why he had repeated press releases.
11 That's why he goes to speak to the press at the execution of
12 the search warrant even though he doesn't help. This is all
13 about publicity.

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14 You know, we mentioned when we were talking to Sheriff
15 Arpaio, former Sheriff Arpaio, that he is the former sheriff.
16 We have a new sheriff. How many times have you seen him on TV
17 talking about some horrible crime? I can't think of any that I
18 have seen him on TV. I saw him on TV when he won the election,
19 and that's the last I have seen of the guy.

04:52PM

20 Let me ask you this --

04:53PM

21 MR. LEONARD: Your Honor, there's no evidence to
22 support that statement.

23 MR. MONTROYA: Just asking on their own experience,
24 Your Honor.

25 THE COURT: It's borderline, but that's stricken. So

04:53PM

1 you may continue. You are not allowed to speak about your own
2 experience or views.

3 MR. MONTTOYA: Understand.

4 Scanning your experience, you can take your own
5 experience into the jury room. And ask yourself how many times 04:53PM
6 you have seen the new sheriff saying that he has proper
7 evidence that someone is a 21-count felon. Remember we also
8 have chief of police if you are from Phoenix or live in the
9 Phoenix media area. When is the last time you have seen her?
10 She's a tall lady. When is the last time you have seen her 04:53PM
11 accusing someone of 21 felony counts? That's unique to the
12 celebrity. Remember I asked him how many times have you been
13 interviewed? He gave me something specific on that one, didn't
14 he: 5,000 interviews. And he mentioned that some of them were
15 international. 04:54PM

16 So there's no evidence. And the absence of evidence
17 makes it malicious. The absence of evidence coupled with the
18 constant attempt to use this as a platform for publicity makes
19 it malicious. The judge has already said, hey, there was no
20 probable cause. There were damages. They can't dispute there 04:54PM
21 were damages. Did they testify that the worst day of their
22 lives was when the dogs died? Yeah, they did. They both did.
23 Good for them. That means they put dead, innocent animals
24 above what happened to them. That's a good thing. That
25 actually shows that they are honest and it shows they cared 04:55PM

1 about those animals. Don't ever forget that one of those
2 animals was Logan's family dog, Patrick. Did they think they
3 were placing the animals in harm's way? Yeah, they wanted to
4 kill their own dog. They thought it was safe. There's no
5 evidence to the contrary. The independent judgment, junk in,
6 junk out. Do you really seriously believe for a millisecond
7 that the county attorney would have brought this before the
8 Grand Jury without Trombi's strong recommendation that she
9 hand-walked in there with her passion for her work? The only
10 reason the county attorney prosecuted because this case was
11 handed to them after an extensive investigation by the
12 sheriff's office. That's the only reason. They would have
13 never done it on their own. Once they found out the true facts
14 when these two young people had to get their own lawyer, the
15 guy in charge dismissed the case based upon the arguments of
16 defense counsel that accused Trombi of being a liar. And guess
17 what? If Trombi lied, Steinberg must have lied, too, because
18 Steinberg, her testimony was the mirror image of Trombi's. She
19 justified this the same way that Trombi did. Oh, no, this
20 shows it was working all night. Oh, frozen doesn't mean
21 doesn't work. It can be frozen and totally ineffective but
22 it's still working. They said the same exact thing. That
23 shows their bad faith and that they ought not to be believed.

24 The full and fair disclosure, we have talked about
25 that. The foot long, several feet long graph, what did that

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1 show? Are you curious what that showed? Are you curious about
2 the graph that Steinberg and her boss allegedly created? Don't
3 you wish you could see what that said? They didn't want you to
4 see what it said so they hid it from you. But then they have
5 the audacity to say that's a full and fair disclosure.

04:57PM

6 Remember the judge's jury instructions say that there is no
7 independent prosecutorial defense if there wasn't a full and
8 fair disclosure. They have admitted that there was no full and
9 fair disclosure because they haven't produced these records to
10 you. And you can only guess what they say.

04:58PM

11 MR. LEONARD: Your Honor.

12 THE COURT: What?

13 MR. LEONARD: This is totally unsupported.

14 THE COURT: Overruled. And one minute left.

15 MR. MONTROYA: Yes. I am going to end where I started.
16 I have already told you what the case isn't about, because it's
17 about the absence of evidence, the absence of a shred of
18 evidence against these two. Now let me tell you what it is
19 about, where I started. It's about the power of government to
20 crush a private citizen's life. That's what this case is
21 really about: No evidence; tons of publicity; power of the
22 Grand Jury; indict a ham sandwich; based on no evidence;
23 distort the evidence; lie about the evidence; crush somebody's
24 life.

04:58PM

04:58PM

25 This poor kid in the suit, he still hasn't got over

04:59PM

1 this. He's still on anti-depressants and anti-anxiety
2 medicines. And do you remember the TMS treatment that he's
3 still on? He still hasn't graduated from college.

4 THE COURT: Your one minute is more than up.

5 MR. MONTROYA: That's what this case is about,
6 government abuse. And here's what this case should end up --

7 THE COURT: Thank you, Mr. Montoya. You are finished.

8 (Excerpted proceedings concluded at 4:59 p.m.)
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C E R T I F I C A T E

I, LAURIE A. ADAMS, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control.

DATED at Phoenix, Arizona, this 20th day of December, 2017.

s/Laurie A. Adams

Laurie A. Adams, RMR, CRR